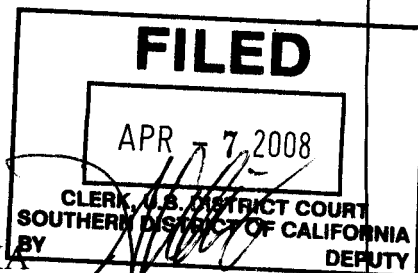


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ORIGINAL

Attorneys for Mr. Carlos Estrada-Jimenez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE JANIS L. SAMMARTINO)



UNITED STATES OF AMERICA,

CASE NO. 07cr3209-DLS

Plaintiff,

DATE: April 7, 2008

TIME: 9:00 a.m.

v.

CARLOS ESTRADA-JIMENEZ,

DEFENDANT'S THEORY OF DEFENSE
JURY INSTRUCTION

Defendant.

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, AND
PAUL COOK, ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that on April 7, 2008, at 9:00 a.m., or as soon thereafter as
counsel may be heard, the defendant, Carlos Estrada-Jimenez, by and through his counsel,
Robert Rexrode, will ask this Court to instruct the jury with the following instruction.

Respectfully submitted,

Dated: April 7, 2008


ROBERT H. REXRODE, III
Attorney for Mr. Estrada-Jimenez
robert_rexrode@rexrodelawoffices.com



1 Defendant's Proposed Jury Instruction 1 (with authority in text)

2
3 "Physical presence [in the United States] is insufficient to sustain a conviction of
4 being 'found in' the United States." *United States v. Cruz-Escoto*, 476 F.3d 1081, 1085 (9th
5 Cir. 2007) (citation omitted).

6 "The government must also prove that [an] individual 'entered the United States free
7 from official restraint at the time officials discovered or apprehended him.'" *Id.*

8 "The burden is on the government to establish lack of official restraint." *Id.*

9 If you find the government has not proven beyond a reasonable doubt that
10 Mr. Estrada-Jiminez was free from official restraint at the time he was apprehended, you
11 must return a verdict of not guilty.

12
13 "A [person] is under 'official restraint' if, after crossing the border without
14 authorization, he is 'deprived of [his] liberty and prevented from going at large within the
15 United States.'" *Cruz-Escoto*, 476 F.3d at 1085 (citation omitted) (second bracket in
16 original). "Because the concept of official restraint is interpreted broadly, [a person] need
17 not be in physical custody of authorities to be officially restrained." *Id.* "[T]he restraint may
18 take the form of surveillance, unbeknownst to the [person]" *Id.* (first bracket in
19 original) (ellipses in original).

20
21
22 Authority for Giving a Theory of Defense Instruction

23 *United States v. Bello-Bahena*, 411 F.3d 1083, 1088 (9th Cir. 2005) ("A defendant is entitled
24 to have the judge instruct the jury on his theory of defense, provided that it is supported by
25 law and has some foundation in the evidence.")

1 Defendant's Proposed Jury Instruction 1 (without authority in text)

2
3 Physical presence in the United States is insufficient to sustain a conviction of being
4 "found in" the United States. The government must also prove that an individual entered the
5 United States free from official restraint at the time officials discovered or apprehended him.

6 The burden is on the government to establish lack of official restraint. If you find the
7 government has not proven beyond a reasonable doubt that Mr. Estrada-Jiminez was free
8 from official restraint at the time he was apprehended, you must return a verdict of not guilty.

9
10 A person is under "official restraint" if, after crossing the border without
11 authorization, he is deprived of his liberty and prevented from going at large within the
12 United States. Because the concept of official restraint is interpreted broadly, a person need
13 not be in physical custody of authorities to be officially restrained. The restraint may take
14 the form of surveillance, unbeknownst to the person.

1 COURT'S INSTRUCTION _____
2

3 Physical presence in the United States is insufficient to sustain a conviction of
4 being "found in" the United States. The government must also prove that an individual
5 entered the United States free from official restraint at the time officials discovered or
6 apprehended him.

7 The burden is on the government to establish lack of official restraint. If you find
8 the government has not proven beyond a reasonable doubt that Mr. Estrada-Jiminez was
9 free from official restraint at the time he was apprehended, you must return a verdict of
10 not guilty.

11
12 A person is under "official restraint" if, after crossing the border without
13 authorization, he is deprived of his liberty and prevented from going at large within the
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